

**UNITED STATES DISTRICT COURT**

## EASTERN DISTRICT OF TEXAS

TIM WHATLEY  
and SHEILA WHATLEY,

Plaintiffs,

*versus*

GREAT LAKES INSURANCE, SE,  
and MCCLELLAND & HINE, INC.,

Defendants.

CIVIL ACTION NO. 1:19-CV-444

**MEMORANDUM ORDER ADOPTING ON MOTION TO DISMISS**

The court referred this matter to United States Magistrate Judge Keith F. Giblin for consideration and recommended disposition of case-dispositive motions. On July 6, 2020, Judge Giblin issued a report and recommendation on the defendant Great Lakes Insurance, SE's motion to dismiss. He recommended that the Court grant the motion in part and deny it in part. The magistrate judge recommended that the Court grant the motion as to the dismissal of defendant McClelland and Hine, Inc., and the Plaintiffs' common law negligence cause of action. He found that the motion should be denied on the Plaintiffs' claims for breach of contract, violations of the Texas Insurance Code, and violations of the Texas Deceptive Trade Practices Act (DTPA) against the defendant insurer, Great Lakes Insurance, SE.

No party has objected to the magistrate judge's recommendation. After review, the Court finds that Judge Giblin's findings and recommendations should be accepted. The Court ORDERS that the report and recommendation (#27) is ADOPTED. The Court further ORDERS that the defendant's motion to dismiss (#15) is GRANTED in part and DENIED part. The Plaintiffs' claims against defendant McClelland and Hine, Inc., are dismissed, with prejudice. The Clerk

is directed to terminate McClelland and Hine, Inc., as an active party defendant. The plaintiffs' negligence claim is also dismissed in its entirety with prejudice. Plaintiffs' causes of action for breach of contract and violations of the Texas Insurance Code and DTPA asserted against defendant Great Lakes Insurance, SE, remain pending.

SIGNED at Beaumont, Texas, this 3rd day of August, 2020.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE